

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DEVIN GARRETT,

Petitioner,

v.

WARDEN, Toledo Correctional
Institution,

Respondent.

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Case No. 3:19-cv-191

JUDGE WALTER H. RICE

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #19) AND
SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. #22);
OVERRULING PETITIONER'S OBJECTIONS TO REPORT AND
RECOMMENDATIONS (DOC. #20); SUSTAINING RESPONDENT'S
MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS
AS TIME-BARRED (DOC. #14); DISMISSING PETITION (DOC. #1)
WITH PREJUDICE; DENYING CERTIFICATE OF APPEALABILITY
AND LEAVE TO APPEAL *IN FORMA PAUPERIS*; JUDGMENT TO
ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER;
TERMINATION ENTRY

Based on the reasoning and citations of authority set forth by United States
Magistrate Judge Michael R. Merz in his November 26, 2019, Report and
Recommendations, Doc. #19, and his January 3, 2020, Supplemental Report and
Recommendations, Doc. #22, as well as upon a thorough *de novo* review of this
Court's file and the applicable law, the Court ADOPTS said judicial filings,
SUSTAINS Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus as
Time-Barred (Doc. #14), and DISMISSES the Petition (Doc. #1) WITH PREJUDICE.

Petitioner's Objections to the initial Report and Recommendations, Doc. #20, are OVERRULED as meritless. As Magistrate Judge Merz explained, although AEDPA's one-year statute of limitations is tolled by the proper filing of a collateral attack, the statute of limitations does not start over when the collateral attack is denied. In this case, the statute of limitations expired on March 17, 2019. Given that the Petition was not filed until June 19, 2019, it is time-barred.

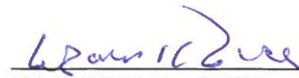
The Court notes that, although Petitioner was notified of his right to file Objections to the Supplemental Report and Recommendations, and of the consequences of failing to do so, no Objections were filed within the time allotted.

Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be *objectively* frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

Judgment will be entered in favor of Respondent and against Petitioner.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: January 31, 2020



WALTER H. RICE
UNITED STATES DISTRICT JUDGE